

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Dean Langford and Nancy Langford,
husband and wife,

Plaintiffs,

v.

Zimmer, Inc. and Zimmer Holdings, Inc.,

Defendants.

Case No: 03-12245-RCL

**PLAINTIFFS' MOTION FOR
RECONSIDERATION OF ORDER
DENYING PLAINTIFFS' MOTION TO
AMEND OR IN THE ALTERNATIVE
FOR CERTIFICATION PURSUANT TO
28 U.S.C. § 1292(b)**

Plaintiffs Dean Langford and Nancy Langford hereby respectfully request that the Court reconsider its September 6, 2004 Order denying Plaintiffs' Motion to Amend their Complaint, or in the alternative, Plaintiffs respectfully move this Court for an order pursuant to 28 U.S.C. § 1292(b) certifying this Court's September 6, 2004 Order for interlocutory appeal and staying this litigation pending resolution of the appeal. Plaintiffs bring their Motion for Reconsideration pursuant to Federal Rules of Civil Procedure 59(e) and 60(b)¹, and in the alternative, their Motion for Certification pursuant to 28 U.S.C. § 1292(b). This Motion is based on the record in this case and the Plaintiffs' supporting Memorandum of Law in Support of Motion for Reconsideration or in the alternative Motion for Certification.

REQUEST FOR ORAL ARGUMENT

Plaintiffs respectfully request oral argument on this motion.

¹ Plaintiffs bring their Motion for Reconsideration pursuant to both Rules 59(e) and 60(b) because of the language of the text and First Circuit precedent. While the literal language of Rule 59(e) requires the decision at issue to be a "judgment," and therefore would not appear to apply to the Court's Order denying Plaintiffs' Motion to Amend, First Circuit precedent appears to hold that Rule 59(e), and not Rule 60(b), is applicable to mistakes of law made in an Order, regardless of whether the decision was a "judgment." *Silk v. Sandoval*, 435 F.2d 1266, 1267-68 (1st Cir. 1971). Plaintiffs therefore bring their Motion for Reconsideration under both Rules 59(e) and 60(b) in the event that the Court decides that either one or the other applies. *See Connors v. Maine Medical Ctr.*, 70 F. Supp. 2d 40, 41 (D. Maine 1999) (allowing motion for reconsideration of order denying motion to amend complaint).

Dated this 20th day of September, 2004.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 2004, I electronically filed the foregoing Plaintiffs' Motion for Reconsideration of Order Denying Plaintiffs' Motion to Amend or in the Alternative for Certification pursuant to 28 U.S.C. § 1292 (b) with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Edgar B. Hatrick
Day, Berry & Howard LLP
260 Franklin Street
Boston, MA 02110

Francis H. Morrison
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Hartford, CT 06103-3499

I further hereby certify that on this 20th day of September, 2004, a copy of the foregoing Plaintiffs' Motion for Reconsideration of Order Denying Plaintiffs' Motion to Amend or in the Alternative for Certification pursuant to 28 U.S.C. § 1292 (b) will be sent to the following via First Class Mail:

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